

FILED 09 MAY 28 12:37 USDC-ORN

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

CARRIE J. HALE MCCOIN,
Petitioner,

Civ. No. 07-1171-CL

v.

MARVIN FICKLE,

ORDER

Respondent.

PANNER, District Judge:

Magistrate Judge Mark D. Clarke filed a Report and Recommendation, and the matter is now before this court. See 28 U.S.C. § 636(b)(1)(B), Fed. R. Civ. P. 72(b). Petitioner has filed objections. I have reviewed the file of this case de novo. 28 U.S.C. § 636(b)(1)(C); McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F. 2d 1309, 1313 (9th Cir. 1981).

I agree with Magistrate Judge Clarke that petitioner has not shown that her trial counsel was ineffective. Counsel's decision not to call Gus Willemin as a witness was reasonable because Willemin's testimony about petitioner's injuries was cumulative.

In her objections, petitioner notes that the Report and Recommendation states that "the claims for inadequate assistance of counsel . . . fail," which is the Oregon standard for evaluating a criminal defense counsel's performance. R&R at 13 (emphasis added). The federal standard requires a showing of ineffective assistance of counsel. See Strickland v. Washington, 466 U.S. 668 (1984).

I see no indication that the Report and Recommendation failed to apply applicable federal law. Even if the Report and Recommendation did apply the Oregon standard, the result would not change under the federal standard because there is no meaningful difference between "inadequate" and "ineffective." See State v. Davis, 345 Or. 551, 579, 201 P.3d 185, 202 (2008) (implying that the two standards are interchangeable); cf. State v. Smith, 339 Or. 515, 526, 123 P.3d 261, 268 (2005) (describing "adequate" as "the more accurate word adopted by this court").


I find no error in the Report and Recommendation.

CONCLUSION

Magistrate Judge Clarke's Report and Recommendation (#32) is adopted. The petition is dismissed.

IT IS SO ORDERED.

DATED this 28 day of May, 2009.


 OWEN M. PANNER
 U.S. DISTRICT JUDGE